

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY**

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September 10, 2004

Andrew H. Cohn, Esquire
John W. Delaney, Esquire
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109

Re: Aquaria LLC, D.T.E. 04-76:

Dear Sirs:

Enclosed is the first set of information requests and briefing questions by the Department of Telecommunications and Energy regarding the referenced matter. Please submit copies of your responses to these information requests and briefing questions to the Department within seven days.

Should you have any questions please contact me at (617) 305-3579. Thank you for your prompt attention to this matter.

Sincerely,

Caroline M. Bulger
Hearing Officer

Enc.
cc: Service List
Mary Cottrell, Secretary

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**FIRST SET OF INFORMATION REQUESTS AND BRIEFING QUESTIONS
OF THE DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
TO AQUARIA LLC**

D.T.E. 04-76

Pursuant to 220 C.M.R. 1.06(6)(c), the Department of Telecommunications and Energy ("Department") hereby submits the following information requests and briefing questions.

INSTRUCTIONS

The following instructions apply to this set of Information Requests and Briefing Questions and all subsequent Information Requests and Briefing Questions issued by the Department to the Company in this proceeding.

1. Each request should be answered in writing on a separate, three-hole punch page with a recitation of the request, a reference to the request number, the docket number of the case and the name of the person responsible for the answer.
2. Do not wait for all answers to be completed before supplying answers. Provide the answers as they are completed.
3. These requests shall be deemed continuing so as to require further supplemental responses if the Company or its witness receives or generates additional information within the scope of these requests between the time of the original response and the close of the record in this proceeding.
4. The term "provide complete and detailed documentation" means:

Provide all data, assumptions and calculations relied upon. Provide the source of and basis for all data and assumptions employed. Include all studies, reports and planning documents from which data, estimates or assumptions were drawn and support for how the data or assumptions were used in developing the projections or estimates. Provide and explain all supporting work-papers.
5. The term "document" is used in its broadest sense and includes, without limitation, writings, drawings, graphs, charts, photographs, phono-records, microfilm, microfiche, computer printouts, correspondence, handwritten notes, records or reports, bills, checks, articles from journals or other sources and other data compilations from which information can be obtained and all copies of such documents that bear notations or other markings that differentiate such copies from the original.

6. The term “Supplement” refers to the Supplement to Petition of Aquaria LLC filed August, 2004.
7. If any one of these requests is ambiguous, notify the Hearing Officer so that the request may be clarified prior to the preparation of a written response.
8. Please serve a copy of the responses on Mary Cottrell, Secretary of the Department, one copy to the Service List, one copy to Caroline M. Bulger, Hearing Officer, and six copies to A. John Sullivan, Analyst, Rates and Revenue Division. A copy should also be sent to dte.efiling@state.ma.us.

Requests

- DTE 1-1 Please explain the basis on which the Company has concluded that Aquaria constitutes a water company as defined by G.L. c. 165, § 1.
- DTE 1-2 Please explain the advantages and disadvantages, if any, to the Company if the Department finds that Aquaria is a water company as defined by G.L. c. 165, § 1.
- DTE 1-3 Refer to Supplement at 2. Please explain why the Company seeks exemptions from the requirements of G.L. c. 164, §§ 96, 99, 101, 102A, and 102B. Please discuss each statutory section separately, including a caption that contains the relevant statutory section and a brief description of the section.
- DTE 1-4 Please refer to Supplement at 3.
- (a) Confirm, or amend as appropriate, whether Aquaria registered on June 11, 2002 with the Secretary of the Commonwealth as a foreign limited liability company, under certificate number 043566882; and
- (b) Explain, notwithstanding possession of such certificate from the Secretary of the Commonwealth, how the requirements of G.L. c. 164, §§ 4 through 8D are “inapplicable and unworkable” as they relate to Aquaria. As part of this response, discuss how the corporate governance requirements described in these statutes would affect the ability of Aquaria to operate.
- DTE 1-5 Refer to Supplement at 3. Please explain how the requirements of G.L. c. 164, §§ 10, 11, 12A, 13, 16, 16A, 17, 17A, 18, 19, 21, 22, 23, 24, 25, and 33 are “inapplicable and unworkable,” as they relate to Aquaria. Please discuss each statutory section separately, including a caption that contains the relevant statutory section and a brief description of the section.

- DTE 1-6 Refer to Supplement at 4-5. Please explain why the right of user requirements of G.L. c. 164, § 92 are “inapplicable” as they relate to Aquaria.
- DTE 1-7 Refer to Supplement at 5. Please explain why the office location requirements of G.L. c. 164, § 80 are “inapplicable” as they relate to Aquaria. As part of this response, explain whether the space in the desalinization plant devoted to administrative matters associated with the facility would fairly be considered to constitute an “office” for purposes of compliance with that statute.
- DTE 1-8 Refer to Supplement at 5-6. Please explain why the requirements of G.L. c. 164, §§ 81, 82, and 128 are “inapplicable” as they relate to Aquaria. Please discuss each statutory section separately, including a caption that contains the relevant statutory section and a brief description of the section.
- DTE 1-9 Refer to Supplement at 6-7. Please explain why the Company is seeking an exemption from 220 C.M.R. § 31.00, a regulation whose application is optional to a water utility.
- DTE 1-10 Refer to Supplement at 6-7. Please explain why the Department’s regulations in 220 C.M.R. § 52.00 are “inapplicable” as they relate to Aquaria. As part of this response, explain how the Company intends to satisfy the requirements of G.L. c. 164, § 83 in the absence of a system of accounts as set forth in 220 C.M.R. § 52.00.

Briefing Questions

- BQ 1-1 Please discuss the legal basis for the proposition that state agencies have the authority to waive or exempt companies they may regulate from provisions of Massachusetts general law.
- BQ 1-2 Refer to Supplement at 3. Please discuss the corporate obligations of a limited liability company, as distinct from a corporation. As part of this response, explain a limited liability company’s filing requirements with the Secretary of the Commonwealth of Massachusetts.
- BQ 1-3 If the Department finds that the Company is exempted from the requirements of G.L. c. 164, § 96, under what authority would the Department regulate the Company should the Company decide to sell, transfer, or close its planned desalinization plant in Dighton?

- BQ 1-4 Please discuss the attributes of an “aqueduct company” as used in G.L. c. 165, §§ 12 through 27 and whether they apply to Aquaria. Include in your discussion whether the Company constitutes an “aqueduct company” as the term is used in G.L. c. 165 and explain the advantages and disadvantages, if any, to the Company if the Department finds that Aquaria is an “aqueduct company” as the term is used in G.L. c. 165.
- BQ 1-5 Please discuss whether the classification as a water company with exemption from most of the attendant obligations found in G.L. c. 164 would be met by a Department determination that Aquaria constitutes an “aqueduct company” as the term is used in G.L. c. 165.
- BQ 1-6 Please discuss whether the classification as a water company with exemption from most of the attendant obligations found in G.L. c. 164 would be met by a Department determination that Aquaria is a “water company” as defined by G.L. c. 165, § 1, yet constitutes a class of water company known as an “aqueduct company.”